



MEMORANDUM – FRBNY/DFS RESTRICTED

TO: FILES
FROM: CARMEN SEGARRA
INSTITUTION: GOLDMAN SACHS
SUBJECT: GS REPUTATIONAL RISK ISSUES
DATE: NOVEMBER 9, 2011 3:00 pm

Administrative

Attendees:

Goldman Sachs (“GS”): Michael Keats, Tom Riggs, and Norman Feit

New York State Department of Financial Services (“DFS”): Grace Gonzalez

Federal Reserve Bank of New York (“FRBNY”): Leslie Sperber, Johnathon Kim, Matthew Hertzog, Carmen Segarra

Federal Deposit Insurance Corporation (“FDIC”): None

Minutes

Johnathon leads off: We know that reputational risk is VIP for Goldman. We are trying to understand the rationale for conflict of interest determinations, who are the decision makers, etc.

Norman: We are just lawyers, we advice from time to time on conflicts of interest issues. We have a group that manages conflicts on a daily basis. It’s a worldwide group that reports to the Executive Office. Gwen Libstag heads it, and has been leading it since Norman joined GS in 1992. Everything that we are going to be talking about flows through that group. That group will analyze the situation and if necessary, say no, or set parameters, which can range from such things as consenting adult letters from clients to setting up teams [such as red and blue teams] to institutional internal walls. The group has evolved as the firm has evolved. In 1992 it was a simple set up, no buy side worries, only US law issues – now it is much more evolved, covers buy and sell side, US and other foreign jurisdictions.

Tom: We must differentiate between actual versus perceived conflicts

Norman: Kinder Morgan as an example. We have a longtime simultaneous relationships with El Paso [Advisory] and Kinder [Merchant Banking]. After the IPO GS still had a 19% interest in KM, but also had a team working with El Paso discussing possible spin-offs. When Rich Kinder approached GS as part of the transaction to purchase El Paso it was obvious to everyone that we could not advise El Paso. The question was: do we abandon the client, despite the longstanding relationship and vast institutional knowledge? It was decided that Morgan Stanley would come in, as senior advisor. We had a very narrow, circumscribed role that kept us out of the boardroom and all negotiations. In addition, GS did not offer a fairness opinion on the offer either. All that process of what the roles would be and where the line would be drawn was made by Gwen. No one has come to top the offer made, which is the ultimate barometer of fairness. Shareholder litigation caught on the GS maintains an interest in KM and was named as an advisor to El Paso in the disclosure documents. The complaints filed however, do not highlight the fact that our role was extremely circumscribed. We now have litigation in Texas and Delaware. The ethical and reputational risk analysis was done by Gwen at the right time.

Johnathon: Who were the decision makers? Would legal have been involved?

Norm: I was the principal advisor at GS for conflicts for 10 years, I still do it from time to time, but Randy Stuzin now does the day to day as the IMD lawyer. He worked at Cravath, focused on equity capital markets, now is co-general counsel in London. Anyone relevant would have been brought on board and would have been present to make the decision.

Tom: Gwen's group contains former lawyers.

Johnathon: Is Gwen an attorney?

Tom: No.



Norm: When items are presented before the Conflicts Group: There are several layers of analysis done, first: Business Selection, who you would rather work for – the buyer, the seller; then, reputational risk – which elements, the “Wall Street Journal” test; third: legal obstacles – what are the issues involved. Sensitivity to market perception is, the hurdle for number 2, is so high that rarely is a decision made on the third factor.

Johnathon: Business selection and conflicts, are those two separate groups?

Tom: No, they are the same group. They have very varied and sophisticated backgrounds.

Norm: As business gets more complex, more factors go into the decision making. The conflicts group has access to the CLYDE database, but they have their own sophisticated system they use to make their determinations. [He highlights the potential multiple touch points, and that these guys focus on them]

Johnathon: Can we get a copy of the group's policy document? Charter?



Grace: Checklist?

Tom: Yes. It's probably more than one document -- there is no one policy per se.

Norm: Some of the information is automated. I seriously doubt they have policies and procedures that are detailed.

Tom: They do have policies and procedures [that lay down the basic parameters] my suspicion is there is more than one.

Johnathon- Could you give me a narrative on Solyndra?

Michael : We were their financial advisor in 2008, placement agent for them, we were going to be the lead in their IPO. We were not retained to be their restructuring advisor per se, but we were around.

Norm: A conflicts check would have been done.

Johnathon: So it's an appearance of a conflict.

Michael: Yes. We actually lost \$7 million dollars in fees because we kept deferring them as we knew they were trying to raise money.

Johnathon: And Capmark?

Michael: In Capmark we definitely have a conflicts issue. Our relationship with Capmark began in 2005. We've been lending to them from time to time. In May 2009 GS had an equity stake of less than 20% in Capmark and a member on the board. we also had a non-control letter. Capmark restructured all of their debt in 2009 outside of bankruptcy court, and 5 months later filed for bankruptcy. The secured creditors reached a settlement. A preference action against GS was raised first in DE and now in NY (we suspect because they are trying to get away from a tough judge in DE) because GS' unsecured debt was rollup into a secured facility. The issue is that somehow because we had people on the board the lenders must have exerted undue influence to give GS preferential treatment.

Johnathon: Who was the lead arranger?

Michael: I want to say Citi, but it may have been JP Morgan Chase. We saw that this company was under distress, we raised it internally with Gwen, and her group issued an order to prevent conversations with the GS director. There are emails that evidence that the conflicts check was performed, and that it worked, because the director received an email and he responded "can't talk".

Norman: If you remove our director, it's the same situation that arises in these types of bankruptcies and restructurings. You should speak with Jen Ford -- she is the Chief Compliance Officer in the investment banking division that helps administer these precepts like Chinese walls.

Johnathon: [Questions them on their reserve methodology, and the recent communication indicating they had increased their reserves] Quarterly regulatory disclosures have disclosed that GS has increased its estimate of "reasonably possible" losses from legal claims by 30% in the third quarter. We do have an outstanding meeting request for GS to provide an overview of the legal reserve methodology and estimable losses. Curtis was to have scheduled the meeting but we understand that he is leaving GS. Has he left the institution yet?

Norman: Yes

Johnathon: We will give you the literature that Curtis and I went through and we can follow-up with Tom.

Norman: [Goes into a description of the factors they take into consideration when producing that report. Expounds on the abstract concept of remoteness and likelihood and the difference between those two.]

Johnathon: Who does Gwen report to in the Executive Office?

Norman: Lloyd or Gary, not sure. She also sits in the Business Standards Committee or whatever that is called.